

December 23, 2024  
LAURA A. AUSTIN, CLERK  
BY: s/A. Beeson  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**JAMES K. TUSTIN,**  
**Plaintiff,**  
  
**v.**  
  
**WALLENS RIDGE STATE PRISON,**  
**Defendant.**

)  
) **Civil Action No. 7:24cv00512**  
)  
) **OPINION and ORDER**  
)  
) **By: Robert S. Ballou**  
) **United States District Judge**

Plaintiff James K. Tustin, a Virginia inmate proceeding *pro se*, has filed a civil rights action pursuant to 42 U.S.C. § 1983, alleging that he was not given his dinner tray on April 30, 2024. Upon preliminary review of the Complaint, required by 28 U.S.C. § 1915A, I will dismiss the Complaint for failing to state a claim for which relief may be granted.

Section 1983 provides a cause of action against any “person” who, acting under color of state law, deprives another of “any rights, privileges, or immunities secured by the Constitution and laws” of the United States. 42 U.S.C. § 1983. Liability under § 1983 is “personal, based upon each defendant’s own constitutional violations.” *Trulock v. Freeh*, 275 F.3d 391, 402 (4th Cir. 2001). A prison is not a “person” within the meaning of § 1983. *Lail v. White*, 978 F.2d 1255, n.4 (4th Cir. 1992) (unpublished) (citing *Will v. Dep’t of State Police*, 491 U.S. 58 (1989)).

Even had Tustin named a proper person as a defendant, his suit has no merit. Missing a single meal does not rise to the level of a constitutional violation. *See White v. Gregory*, 1 F.3d 267, 269 (4th Cir. 1993) (holding that receiving only two meals per day on weekends and holidays does not constitute cruel and unusual punishment).

Accordingly, the Complaint is **DISMISSED with prejudice** pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim for which relief may be granted, and the Clerk is directed to **STRIKE** this matter from the docket of the court.

The Clerk is directed to send a copy of this opinion and order to the *pro se* plaintiff.

Enter: December 20, 2024

*/s/ Robert S. Ballou*

Robert S. Ballou  
United States District Judge